

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALEXANDER W. DERING,

Plaintiff,

v.

SERVICE EXPERTS ALLIANCE
LLC and SERVICE EXPERTS,
INC.,

Defendants

CIVIL ACTION NO.
1:06-CV-0357-RWS

ANDY LEWIS HEATING & AIR
CONDITIONING, LLC,

Plaintiff,

v.

PEACHTREE SERVICE
EXPERTS, LLC, SERVICE
EXPERTS ALLIANCE, LLC and
SERVICE EXPERTS, INC.,

Defendants.

CIVIL ACTION NO.
1:06-CV-0358-RWS

ORDER

These cases were consolidated for a jury trial, and the jury returned a verdict in favor of Plaintiffs. Following the trial, Defendants filed a Motion for

Judgment as a Matter of Law, New Trial, or Remittitur ([259] in Case No. 357¹ and [241] in Case No. 358²). On June 18, 2009, the Court issued an Order ([275] in Case No. 357 and [257] in Case No. 358) granting Defendants' Motion in part and denying it in part and directing the Clerk to enter judgments in favor of Plaintiffs. Pursuant to that Order, Judgments ([276] in Case No. 357 and [258] in Case No. 358) were entered.

Following entry of the judgments, Defendants filed an Emergency Motion to Correct Mistake in Order and Judgments and Request for Temporary Stay of Execution ([278] in Case No. 357 and [260] in Case No. 358). In their Motion, Defendants point out that the Court directed entry of judgment against Service Experts, Inc. on Plaintiff Alexander Dering's contract claim when the Court had previously granted judgment as a matter of law to Service Experts, Inc. on that claim. Pursuant to Federal Rule of Civil Procedure 60(a) Defendants urge the Court to correct the mistake in the Order and Judgments.

¹ Alexander W. Dering v. Service Experts Alliance, LLC, et al., Civil Action No. 1:06-CV-357-RWS shall be referred to as Case No. 357.

² Andy Lewis Heating & Air Conditioning, LLC d/b/a/ Andy Lewis/Hobson Heating & Air, LLC v. Peachtree Service Experts, LLC, et al., Civil Action No. 1:06-CV-358-RWS shall be referred to as Case No. 358.

Defendants also sought a temporary stay of execution pursuant to Federal Rule of Civil Procedure 62(b)(4) pending disposition of its Motion to Correct the Judgment. Defendants asserted that Plaintiffs' counsel had stated that he intended to proceed immediately to execute the Judgments. Defendants desired additional time to procure a supersedeas bond and to obtain a ruling on the Motion to Correct the Judgments.

Plaintiff filed a Response ([279] in Case No. 357 and [261] in Case No. 358) stating that Plaintiffs consented to modification of the Judgments and Order as requested by Defendants. Having consented to said modification, Plaintiffs asserted that Defendants had no basis for obtaining a stay of execution.

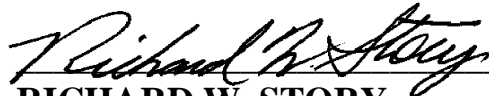
On July 2, 2009, Defendants filed an Emergency Motion for Approval of Supersedeas Bond and for Stay of Execution Pending Appeal ([280] in Case No. 357 and [262] in Case No. 358). Plaintiffs have submitted a supersedeas bond in the sum of \$8,139,482.45 with Travelers Casualty & Surety Company of America as surety. The amount of the bond represents 110% of the Judgment against Defendants. Defendants have stated their intention to file a timely appeal following correction of the Judgments. They seek a stay of execution pursuant to Federal Rule of Civil Procedure 62(d).

The Court finds that the Order and Judgments previously entered mistakenly included breach of contract damages against Service Experts, Inc. Accordingly, Defendants' Emergency Motion to Correct Mistake in Order and Judgments ([278] in Case No. 357 and [260] in Case No. 358) is **GRANTED**. The Judgments ([276] in Case No. 357 and [258] in Case No. 358) are hereby **VACATED**. The Clerk shall enter Judgment in favor of Plaintiff Alexander W. Dering against Defendant Service Experts Alliance, LLC in the amount of \$1,752,621.00 for breach of contract; in favor of Plaintiff Andy Lewis Heating & Air Conditioning, LLC against Defendants Peachtree Service Experts, LLC, Service Experts Alliance, LLC, and Service Experts, Inc. in the amount of \$2,900,000.00 for actual damages pursuant to the Lanham Act and for damages for unfair competition, \$1,852,309.00 for Defendants' profits pursuant to the Lanham Act, and \$250,000.00 for punitive damages. Further, judgment shall be entered in favor of both Plaintiffs against all Defendants in the sum of \$555,092.00 for attorneys' fees and \$89,507.50 for expenses.

Defendants' Emergency Motion for Approval of Supersedeas Bond and for Stay of Execution Pending Appeal ([280] in Case No. 357 and [262] in Case No. 358) is **GRANTED**. The Supersedeas Bond with surety is hereby **APPROVED**, and all actions relating to the execution of the Judgments are

hereby **STAYED** for the duration of Defendants' appeal. In light of the Court's granting of this Motion, Defendants Initial Request for Temporary Stay of Execution ([278] in Case No. 357 and [260] in Case No. 358) is **DENIED AS MOOT**.

SO ORDERED, this 2nd day of July, 2009.


RICHARD W. STORY
United States District Judge